

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO.15 of 2020

Prabhudatta Panda

....

Petitioner

Mr.S.S.K. Nayak, Advocate

-versus-

Madhusmita Palita and another

....

Opp. Parties

Md. G. Madani, Advocate
(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

31.10.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The judgment and order dated 2nd November, 2019 (Annexure-3) passed in Criminal Proceeding No.22 of 2017 is under challenge in this RPFAM, whereby learned Judge, Family Court, Bhadrak, directed the Petitioner to pay Rs.2,500/- per month to Opposite Party No.1 and Rs.2,000/- per month to Opposite Party No.2 as maintenance with effect from the date of filing of the petition under Section 125 Cr.P.C., i.e., 3rd February, 2017.
3. Mr. Nayak, learned counsel for the Petitioner submits that relationship between the parties is not disputed. Along with Criminal Proceeding No.22 of 2017, the Opposite Party No.1 had also filed CP No.16 of 2017 for dissolution of marriage with the present Petitioner. The said Civil Proceeding was disposed of by dissolving the marriage between the Petitioner and Opposite Party No.1 by a decree of divorce and the Opposite Party No.1 has been granted permanent alimony of Rs.1.50 lakh. In spite of the same, the Opposite Parties pursued with the

Criminal Proceeding No.22 of 2017 filed under Section 125 Cr.P.C. and the impugned order has been passed.

4. It is his submission that once the Opposite Party No.1 has received the permanent alimony of Rs.1.50 lakh, she has to show that she does not have sufficient income to maintain her and her child to get maintenance under Section 125 Cr.P.C.. That being absent in the instant case, learned Judge, Family Court, Bhadrak has committed error in passing the impugned order.

5. Mr. Madani, learned counsel for Opposite Party No.1, on the other hand, submits that law is well-settled that a divorced wife is entitled to maintenance under Section 125 Cr.P.C. The Petitioner, who denies maintenance to his divorced wife and child, has to show sufficient reasons for the same. In absence of any sufficient reason to that effect learned Judge Family Court has committed no error in passing the impugned order.

6. Considering the submissions of learned counsel for the parties and on perusal of record, it appears that before disposal of the proceeding under Section 125 Cr.P.C., the petition for dissolution of marriage between the Petitioner and Opposite party No.1 was taken up and disposed of by dissolving the marriage by a decree of divorce by granting permanent alimony of Rs.1.50 to the Opposite Party No.1. That itself does not disentitle her (Opposite Party No.1) to receive maintenance under Section 125 Cr.P.C. Law is well-settled that a divorced wife is also entitled to maintenance. When the Petitioner takes ground that Opposite Parties are not entitled to any maintenance

under Section 125 Cr.P.C. they have to justify their case. Although a ground was taken before the Family Court to the effect that Opposite party No.1 has received a sum of Rs.1.50 lakh towards permanent alimony, but no specific plea to the effect that the Opposite Party No.1 is not entitled to receive any maintenance under Section 125 Cr.P.C., as she has received the permanent alimony, was raised by the Petitioner. As such, there was no occasion on the part of the learned Judge, Family Court, Bhadrak to discuss the same. Therefore, I find no infirmity in the impugned order.

7. Accordingly, the RPFAM being devoid of any merit, stands dismissed.

8. Interim order dated 25th January, 2021 passed in IA No.22 of 2020 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge